

**GARY F. FRANKE CO., L.P.A.**

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275690

September 9, 2002

**SENT VIA FACSIMILE** 1-202-818-6584

Annette M. Lang, Esq.  
Environmental Enforcement Section  
U.S. Department of Justice  
P. O. Box 7611  
Ben Franklin Station  
Washington, DC 20044-7611

In re: The Dow Chemical Company, et al.  
v. Clarke Container, Inc., et al.  
Our File No. 32192/1003

Dear Annette:

This will supplement communications concerning the above matter. As you are aware, we have had several meetings with our client in order to determine the potential for resolving this matter prior to litigation. In your most recent correspondence, you indicated that you would not be willing to entertain settlement unless our client is willing to make a "six figure offer." At this point in time, we are not willing to make such an offer. Rather, we are willing to make what we believe is a reasonable offer based on the information obtained through discovery to date.

Clarke Services, Inc. was established in 1967. A portion of that company, specifically hauling, was purchased by Dick Clarke in 1980 and later sold to BFI in 1984. As you are aware, having deposed practically every employee of Clarke Services, Inc., the Clarks owned a landfill and did not deliver to the Skinner site during the referenced time period. Further, Dick Clarke executed a Non-Compete Agreement with BFI when he sold the business in 1984. The only credible evidence of deliveries to the Skinner Landfill by a Dick Clarke entity occurred between 1988 and 1989 when 177 loads of construction and demolition were delivered. Thereafter, Dick set up Clarke, Inc. in 1990. While Clarke, Inc. may be a successor to Dick Clarke Company, there is clearly no evidence that Clarke, Inc. delivered to the Skinner Landfill site.

*yes  
they did*

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The evidence clearly establishes that "hazardous materials/substances," if any, taken by Dick Clarke entities to the Skinner site were of a *de minimus* quantity. Specifically, Dick Clarke Company delivered one hundred seventy-seven (177) 20 yard roll off containers full of construction demolition waste. The 20 yard containers would obviously contain substantially less than 20 yards of material in that such waste is resistant to compaction and would contain approximately 10 to 15 yards of actual waste materials. Further, there is abundant testimony by all employees that worked for Dick Clarke that stringent efforts were taken to avoid collecting hazardous materials/substances.

It had been determined that there are approximately 372,906 cubic yards of waste disposed at the Skinner site. The evidence indicates that Dick Clarke entities delivered 3,540 cubic yards, assuming all 20 yard roll offs contained a full 20 cubic yards to the site. Consequently, Dick Clarke entities delivered 0.009493 percent of the waste at the Skinner site. Further, it has been determined that solid waste transporters should be liable for 10% of the remedial costs at the Skinner site. Therefore, Dick Clarke entities should be responsible for 0.0009493% of the total cost of the site. The current estimated cost of cleaning up the Skinner site is approximately \$24,000,000.00. On a straight volumetric basis, Dick Clarke entities are responsible for \$22,783.20. Again, this figure does not take into account the bulky nature of construction and demolition waste and/or the undisputed evidence that Dick Clarke entity employees made extraordinary efforts to avoid collecting hazardous materials/substances.

In considering the above together with the substantial cost of litigation and necessary time involved to further pursue this matter, our client is willing to resolve this matter for \$32,783.20. This offer is extremely generous in light of the expenses our client has incurred to date and the complete lack of any substantial evidence that any Dick Clarke entity actually delivered a hazardous material/substance to the Skinner site. If you have any questions, please do not hesitate to contact me. If you believe we are being unreasonable, we are open to any analysis that you are willing to provide which would indicate that our assessment is in any way inaccurate. Please contact the undersigned to further discuss this matter.

September 9, 2002

Annette M. Lang, Esq.

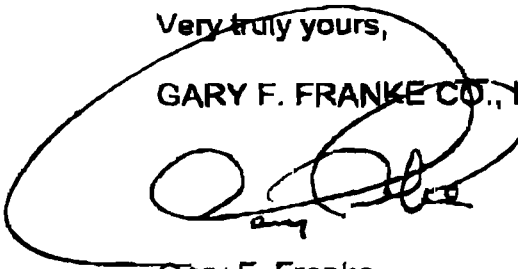
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I look forward to hearing from you

Very truly yours,

GARY F. FRANKE CO., L.P.A.

A handwritten signature in black ink, appearing to read "Gary F. Franke", is written over the typed name. The signature is enclosed within a large, hand-drawn oval.

Gary F. Franke

GFF:pt